Testimony of David R. Cameron

Judiciary Committee Public Hearing
March 23, 2016

Raised H.B. No. 5474

An Act Concerning DNA Testing for Persons Arraigned for a Serious Felony

I am a professor of political science at Yale. I have a long-standing interest in issues related to criminal justice and have served since 2011 as a member of the state's Eyewitness Identification Task Force.

I have appeared before this committee on several occasions in the past in support of legislation that would allow the taking for analysis of a blood or biological sample of DNA (deoxyribonucleic acid) from those arrested for a serious felony. One of those occasions involved a hearing five years ago at which Jayann Sepich, the mother of Katie Sepich, who was raped and strangled in New Mexico in 2003, gave exceptionally moving testimony in support of House Bill 6489, which mandated the taking of a DNA sample from those arrested for a serious felony who had previously been convicted of a felony. As you know, that bill was approved in July 2011 and Public Act No. 11-207 took effect on October 1, 2011.

I appear today to register my strong support for Raised House Bill No. 5474, which repeals and substitutes new language for subsection (a) of section 54-102g, subdivision (1) of subsection (a) of section 54-102h, and section 54-102l of the general statutes.

H.B. 5474 makes several important improvements in the circumstances in which and procedure by which a DNA sample can be taken from a person arrested for a serious felony. First, the bill requires that, before taking the sample, the arrestee must be arraigned and a court must find there is probable cause to believe the person committed the felony in question. Second, the bill removes the requirement that a sample can be taken from a person arrested for a serious felony only if that person had been convicted of a felony prior to the arrest. Third, the bill requires that the sample be taken by the Court Support Services Division of the Judicial Branch or, in the event the person is in custody, by the Department of Correction, rather than by the arresting law enforcement agency. Fourth, the bill requires that the sample be taken after an order by the judge at the request of a prosecutorial official after a finding of probable cause, rather than prior to the person's release from custody. Fifth, the bill requires that the Division of Scientific Services of the Department of Emergency Services and Public Protection immediately expunge all records and identifiable information in its data bank upon receipt of a court order reversing and dismissing a conviction or dismissing or nolling a charge and, upon receipt of a request to expunge those records and information, confirm within 30 days that such records and information have been expunged. Sixth, the bill adds several felonies – assault of a Department of Correction employee, assault of a pregnant woman ending the pregnancy, aggravated sexual assault of a minor, sexual assault in the second, third and fourth degrees, and burglary in the third degree – to the long list of felonies defined as serious.

All of these changes represent significant improvements in the existing law. The proposed legislation provides a greater degree of protection against the possibility that someone who was arrested without probable cause would nevertheless find his DNA being taken and entered into the state's DNA database. It removes the implicit presumption in current law that the DNA of a person arrested for a serious felony would only be of possible investigative value if the person had previously been convicted of a felony. It reduces the likelihood that errors, including contamination, mislabeling or other types of mishandling of a sample, would occur in the collection of the sample. It allows the sample to be analyzed as soon as a court finds probable cause for the arrest rather than delaying the analysis, possibly for many years, until the person is about to be released from custody. It strengthens the obligation of the Division of Scientific Services to respond promptly to a request to expunge all records and identifiable information for a person who is found not guilty of the crime for which he or she was arrested or who had a conviction vacated and the charge dismissed or nolled. And it adds a number of felonies that are, by any definition, serious to the list of felonies for which an arrest, arraignment, and finding of probable cause will result in a court order that a blood or biological sample be taken for analysis of the DNA.

There are, of course, legitimate concerns about requiring that a DNA sample be taken from those arrested for certain felonies, even after a finding of probable cause. Those concerns range from a concern that the taking of a DNA sample constitutes an invasion of privacy and violates the Fourth Amendment prohibition against unreasonable search and seizure to a concern that the person may, as a result, be exposed to the consequences of a mishandling of the sample, including an inadvertent mixing of the sample with one from a crime scene.

Such concerns were raised in 2011 and they may well be raised again in testimony or in committee this year. However, I would note that in 2013, in a decision that one justice described as "perhaps the most important criminal justice procedure case this court has heard in decades," the U.S. Supreme Court ruled in Maryland v. King that, notwithstanding the Fourth Amendment's prohibition against unreasonable search and seizures, states can require that a DNA sample be taken from those arrested for a serious crime and can use it to convict the arrestee of that or some other crime.

Moreover, those concerns have to be weighed against the possibility that taking a DNA sample after a finding of probable cause from those arrested for a serious felony may assist investigators in bringing to justice those who have committed serious crimes, including homicide and sexual assault, and may as well contribute to the identification of the perpetrator of a crime for which another person has been wrongfully convicted and incarcerated.

To note but one case with which you are familiar, in 1989 James C. Tillman was convicted of kidnapping and raping a woman in January 1988, largely on the basis of the victim's identification, and was sentenced to 45 years in prison. In 2003, the Connecticut Innocence Project tracked down the evidence in a long-forgotten storage locker, tested the clothing and other evidence, and found that, while all of the DNA in the case came from a single source, it did not match Mr. Tillman's DNA. He was exonerated in July 2006.

In 2007, Hartford police, working with the Cold Case Unit in the Office of the Chief State's Attorney and the Forensic Sciences Laboratory, obtained a match between the DNA profile of the perpetrator in the crime for which Mr. Tillman was wrongfully convicted and that of a man who was in a Virginia jail awaiting trial for burglaries in three counties. The man, Duane Foster, had lived in Hartford, had been arrested for various felonies at least four times in Connecticut going back to the 1970s, and, as side-by-side photographs of the two men demonstrated, bore a striking resemblance to Mr. Tillman. Mr. Foster's DNA was not in the state's DNA database. But it was in Virginia's database and the Combined DNA Index System (CODIS) administered by the FBI. Why? Because in 2002, Virginia had been the first state in the country to mandate the taking of a DNA sample from persons arrested for certain felonies. When Mr.Foster was arrested in Virginia, a sample of his DNA was obtained and the profile uploaded to CODIS.

As of February 2016, the National DNA Index System, a part of CODIS, contains, in addition to more than 12 million offender profiles, more than 2.2 million arrestee DNA profiles. The system has resulted in more than 320,000 hits that have assisted 310,000 investigations. Despite approval in 2011 of House Bill 6489, because that bill required only that a sample be taken prior to release from custody, Connecticut has no arrestee profiles in its database. That would seem to suggest that, notwithstanding Public Act 11-207, in Connecticut an arrestee's DNA profile is obtained and uploaded into the database only sometime after the person has been convicted.

There are many homicides, sexual assaults and other crimes in Connecticut that remain unsolved, in part because the DNA evidence in the cases does not match any of the DNA profiles of offenders and arrestees in CODIS. As of February 2016, there are 6,119 forensic profiles – i.e., profiles obtained from victims and/or crime scenes – in the state's database. There are undoubtedly also some individuals in prison in the state who were wrongfully convicted in cases despite the presence of DNA evidence from an unknown source. House Bill No. 5474 will increase the state's ability to bring to justice both those who committed serious crimes that remain unsolved and those who committed crimes for which others have been wrongly convicted. I urge approval of House Bill No. 5474.